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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/Fr
Washington, D.C. 20536

PUBLIC COPY

[redacted]

JUL 03 2003

File: [redacted] Office: Vermont Service Center Date:
(EAC 02 125 53054 relates)

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify his spouse as a nonimmigrant, pending the availability of an immigrant visa, pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii). The director denied the petition, finding that the petitioner had not previously filed a Petition for Alien Relative (Form I-130) on behalf of the beneficiary.

On appeal, the applicant states that he was in India in November 2002 and has already submitted a copy of his marriage certificate to the beneficiary. In support of the appeal, the petition submits date-stamped photographs of him and the petitioner together and boarding pass receipts showing his travel from Mumbai, India to Newark, New Jersey via Milan, Italy on November 30th of an unspecified year.

Subsection 1103(a) of the Legal Immigration Family Equity Act (LIFE Act), Public Law 106-553 (2000), amended section 101(a)(15)(K) of the Act to include a nonimmigrant classification for the spouse of a United States citizen. In order to qualify for a K-3 nonimmigrant classification, the beneficiary must first be married to a United States citizen who has filed an immediate relative visa petition on behalf of the alien. The spouse must be seeking to enter the United States to wait for "the availability of an immigrant visa." The LIFE Act was enacted on December 21, 2000, and the related regulations were published as an interim rule on August 14, 2001. *See* 66 Fed. Reg. 42587 (2001)(to be codified at 8 C.F.R. § 214.2).

The instant petition was filed on March 16, 2002. Bureau records indicate that the petitioner did not file a Form I-130 on the beneficiary's behalf until September 21, 2002, six months after having filed the Form I-129F. Therefore, at the time of filing the instant petition, the beneficiary was not eligible for K-3 classification. For this reason, the appeal will be dismissed.

Pursuant to 8 C.F.R § 214.2(k)(2), the denial of this petition is without prejudice. Now that the petitioner has filed a Form I-130 on the beneficiary's behalf, he may file a new Form I-129F petition to classify her as a K-3 nonimmigrant.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.